

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1335 Monroe County
SPONSOR(S): Sorensen
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Local Government Council, 8 Y, 0 N, Nelson, Hamby. Row 2: Governmental Operations Committee, Williamson, Williamson.

SUMMARY ANALYSIS

HB 1335 provides that one or more members of the Monroe County Board of County Commissioners who participate in a special meeting using teleconferencing equipment be deemed in attendance for purposes of establishing a quorum. "Teleconferencing equipment" is defined to mean the electronic transmission of audio, full-motion video, freeze-frame video, compressed video and digital video by any method available that allows a person in one location to meet with another person in a different location. The bill also provides that special meetings authorized by the act must comply with the provisions of current general law.

The act has an effective date of July1, 2006, and repeals in one year.

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### NON-CHARTER COUNTY GOVERNMENT

Counties not operating under county charters have the power of self-government as is provided by general or special law. See, s.1 (f) of Art. VIII of the State Constitution. Section 125.001, F.S. provides that regular and special meetings of a board of county commissioners may be held at any appropriate public place in the county upon the giving of due public notice. Section 125.01(a), F.S., provides that the legislative and governing body of a county has the power to set the time and place of its official meetings.

##### THE ADMINISTRATIVE PROCEDURES ACT

Section 120.54(5)(b)2., F.S., of the Administrative Procedure Act, states that the uniform rules adopted by the Administration Commission must include "uniform rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. . . ." These rules must provide that all evidence, testimony and argument presented be afforded equal consideration, regardless of the method of communication. A notice is required to state if a public meeting, hearing or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means. The notice for public meetings, hearings and workshops utilizing communications media technology must state how persons interested in attending may do so and name locations, if any, where communications media technology facilities will be available. Nothing in this subsection is to be construed to diminish the right to inspect public records under ch. 119, F.S. Limiting points of access to public meetings, hearings and workshops subject to the provisions of s. 286.011, F.S., to places not normally open to the public is presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect. This section provides that other laws relating to public meetings, hearings and workshops, including penal and remedial provisions, apply to public meetings, hearings and workshops conducted by means of communications media technology, and will be liberally construed in their application to such public meetings, hearings and workshops. As used in this subparagraph, "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video and digital video by any method available.

##### NOTICES OF MEETINGS AND HEARINGS; RECORD REQUIRED TO APPEAL

Section 286.0105, F.S., provides that:

Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the

testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).

#### FLORIDA'S GOVERNMENT IN THE SUNSHINE LAW

Section 286.011, F.S., provides, in relevant part, that:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

#### FLORIDA'S VOTING REQUIREMENT LAW

Section 286.012, F.S., provides:

No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143.

#### **Effect of Proposed Changes**

Monroe County, Florida, has a non-charter government. The Board of County Commissioners consists of five members elected at large for staggered terms of four years in the November general election in even years. Regular meetings are held every three weeks on a rotating basis at Key Largo Library in the Upper Keys, the Marathon Government Center, and the Commission Chambers of the Harvey Government Center at Historic Truman School in Key West. When there are conflicting schedules, meetings are held at other locations.

HB 1335 provides that one or more members of the Monroe County Board of County Commissions who participate in a special meeting using teleconferencing equipment shall be deemed in attendance for purposes of establishing a quorum. "Teleconferencing equipment" is defined to mean the electronic transmission of audio, full-motion video, freeze-frame video, compressed video and digital video by any method available that allows a person in one location to meet with another person in a different location.

The bill also provides that special meetings authorized by the act must comply with the provisions of ss. 286.0105, 286.011, and 286.012, F. S. These provisions require, respectively, that the county commission advise in their meeting notices that a record of the proceedings is required to appeal; that the county commission hold its meetings in compliance with the Sunshine Law, and that the county commission comply with Florida's voting requirement law. All meetings of these groups are required to comply with these laws so this language is inconsequential.

The bill prefaces the allowance of teleconferencing equipment on the exclusion of the provisions of s. 120.54(5)(b)2., F.S. While there is no question that a county commission is an "agency"<sup>1</sup> for purposes

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<sup>1</sup> See, s. 120.52(1)(c), F.S., defining "agency" for purposes of Ch. 120 to include "each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions...."

of application of ch.120, F.S., the language of s.120.54(5)(b)2., F.S., limits its terms only to uniform rules for state agencies.

Theoretically, this bill could allow the entire county board to conduct a meeting and public business via telephone. See, Section III A, "Constitutional Issues," of this analysis.

The bill provides for an effective date of July 1, 2006, and provides that the special act repeals on June 30, 2007.

C. SECTION DIRECTORY:

Section 1: Provides definitions; provides for a quorum using teleconferencing equipment; requires that meetings must comply with the provisions of ss. 286.0105, 286.011, and 286.012, F.S.; provides for repeal of special act on June 30, 2007.

Section 2: Provides an effective date.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 27 and 28, 2006

WHERE? *The Reporter*, a weekly newspaper published in Monroe County, Florida, and *The Citizen*, a daily newspaper published in Monroe County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

According to the Economic Impact Statement, this bill will have a positive fiscal impact.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Section 24 (b) of Art. 1 of the State Constitution, provides:

All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

The Office of the Attorney General (OAG) has issued numerous opinions regarding the participation of local governmental board members in public meetings through use of telecommunications media and the compliance of such meetings with Florida's public meetings laws. In AGO 92-44, the OAG concluded that a county commissioner who was physically unable to attend a commission meeting because of medical treatment could participate in the meeting by using an interactive video and

telephone system that allowed her to see the other members of the board and the audience at the meeting and that allowed the board and audience to see her. The opinion recognized that s. 125.001, F.S., required that meetings of the county commission be held in a public place in the county but noted that a quorum of the members of the county commission would be present at the public place. A similar conclusion was reached in AGO 98-28, which concluded that a district school board could use electronic media technology in order to allow a physically absent member to attend a public meeting if a quorum of the members of the board was physically present at the meeting site.

However, in general, the OAG has displayed a reluctance to allow local board members to use telecommunications media:

Allowing state agencies and their boards and commissions to conduct meetings via communications media technology under specific guidelines recognizes the practicality of members from throughout the state participating in meetings of the board or commission. While the convenience and cost savings of allowing members from diverse geographical areas to meet electronically might be attractive to a local board or commission such as a school board, the representation on a school board is local and such factors would not by themselves appear to justify or allow the use of electronic media technology in order to assemble the members for a meeting.<sup>2</sup>

The OAG has argued that a concern about the validity of official actions taken by a public body when less than a quorum is present requires a very conservative reading of the statutes. Thus, the OAG has concluded that, in the absence of a statute to the contrary, a quorum of the members must be physically present at a meeting in order to take action.<sup>3</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The Sponsor may want to consider an amendment which deletes the language on Lines 21 and 22 which states "Notwithstanding section 120.54(5)(b)2., Florida Statutes," as this provision does not apply to local governments.

Other Comments – "Special meeting"

The bill authorizes the use of teleconferencing equipment for establishing a quorum of board members for a *special meeting* of the Board of County Commissioners of Monroe County. A "special meeting" is defined as "a public meeting of the board at which official action is taken, but does not include regular monthly meetings of the board."

In a 2005 informal opinion issued by the OAG to the Mayor Pro-tem, District Three, Monroe County Commission, the OAG stated:

. . . the use of electronic media technology for official meetings has limitations when there is a need for a quorum or when a meeting must be held at a designated location. For workshops and special meetings at which no formal action will be taken, it would appear that such technology may be used. The county must be vigilant, however, in adhering to the requirements of the Sunshine Law and ensure that the meetings or

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<sup>2</sup> See, AGO 98-28.

<sup>3</sup> See, AGOs 83-100, and 89-39, quoting 62 C.J.S. Municipal Corporations s. 399, p. 757, which provides: "In order to constitute a quorum the requisite number of members must be actually present at the meeting and the requisite number cannot be made up by telephoning absent members and obtaining their vote over the telephone."

workshops using electronic media technology are not forums for the commission to undertake formal decisionmaking.<sup>4</sup>

As such, it would appear more appropriate to require a quorum at which a majority of the members is physically present when *official action* is taken, which would not include special meetings as defined by this bill.

#### Other Comments – Monroe County

The County Administrator for Monroe County has indicated that Monroe County's geography as a 140-mile chain of islands connected by bridges and a single road necessitates the use of teleconferencing equipment to conduct public meetings. He indicates that Monroe County would like to receive legislative approval under a one-year "test program." According to the administrator, the use of technology would:

- allow greater public access and input by residents of the county regardless of the meeting location or the location of the resident;
- allow county commissioners to attend board meetings held outside their districts without the need to travel up to 100-plus miles; and
- save considerable salary and travel expenses by reducing the need for staff to travel to attend board meetings.

**Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill in that it may provide an exemption to Florida law regarding public meetings.**

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.

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<sup>4</sup> Informal AGO issued November 29, 2005, relating to Sunshine Law, video conferencing of workshops.